

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 00-0243 CSET**

**CONTROLLED SUBSTANCE EXCISE TAX  
FOR TAX PERIODS: 1999-2000**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**1. Controlled Substance Excise Tax: Constitutionality**

**Authority:** 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution and Article I, Sections 1, 11, 12, 113, 14, 16 and 21 of the Indiana Constitution.

Taxpayer contends that the Controlled Substance Excise Tax is unconstitutional.

**2. Controlled Substance Excise Tax: Imposition**

**Authority:** IC 6-7-3-5. IC 6-8.1-5-1 (b).

Taxpayer protests the imposition of the Controlled Substance Excise Tax.

**3. Controlled Substance Excise Tax: Double Jeopardy**

**Authority:** 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution, Bryant v. State of Indiana, 660 N.E. 2d 290 ( Ind. 1995).

Taxpayer contends that this imposition of the Controlled Substance Excise Tax places him in jeopardy twice for the same offence.

### **Statement of Facts**

Taxpayer was arrested for possession of marijuana on February 3, 2000. On May 8, 2000, the county prosecutor sent the Indiana Department of Revenue a letter stating that he would not press criminal charges concerning the boxes of marijuana received in Indiana prior to February 3, 2000. The Indiana Department of Revenue issued a record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on May 10, 2000, in a base tax amount of \$327,356.72. Taxpayer filed a protest to the assessment. A hearing on the protest was August 23, 2000. Further facts will be provided as necessary.

#### **1. Controlled Substance Excise Tax: Constitutionality**

##### **Discussion**

Taxpayer contends that this assessment of the Controlled Substance Excise Tax violates his federal constitutional rights guaranteed by the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution and state constitutional rights guaranteed by Article I, Sections 1, 11, 12, 13, 14, 16 and 21 of the Indiana Constitution.

An administrative hearing in the agency charged with the implementation and enforcement of a state tax law is not the proper forum to challenge the constitutionality of the state law.

##### **Finding**

Taxpayer's protest is denied.

#### **2. Controlled Substance Excise Tax-Imposition**

##### **Discussion**

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of marijuana in the State of Indiana. Indiana Department of Revenue assessments are presumed to be correct and Taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1 (b).

In a police interview, Taxpayer stated that on several occasions he sent money to California and received a package of marijuana in return. The US Postal Inspection Service Parcel Watch for the area where Taxpayer lived included six parcels which had Taxpayer's name on them as sender, addressee or signatory. Those parcels were received on June 6, 1999; October 13, 1999; November 15, 1999; November 20, 1999; November 24, 1999 and January 21, 2000. Taxpayer possessed each of these parcels of marijuana. Taxpayer's protest to the imposition of the Controlled Substance Excise Tax on these parcels is denied.

There is not sufficient evidence that Taxpayer actually possessed the other parcels of marijuana listed on the US Postal Inspection Service Parcel Watch to assess the Controlled Substance Excise Tax. Taxpayer's protest to the tax assessed on these parcels is sustained.

Taxpayer also contests the amount of the assessment. The Indiana Department of Revenue used estimates of the weights of some of the parcels of marijuana in determining the amount of tax due to the state. Taxpayer did not submit any evidence of actual weights. Taxpayer did not meet his burden of proof that the weights used in determining the amount of the assessment were inaccurate. This point of Taxpayer's protest is denied.

#### **Finding**

Taxpayer's protest is denied in part and sustained in part.

### **3. Controlled Substance Excise Tax: Double Jeopardy**

#### **Discussion**

The Fifth and Fourteenth Amendments of the United States Constitution prohibit placing any citizen in jeopardy twice for the same action. Jeopardy attaches when a determination of guilt is made and a person is put at risk of punishment. Bryant v. State of Indiana, 660 N.E. 2d 290,( Ind. 1995). In the instant case, Taxpayer was criminally prosecuted for a possession of marijuana on February 3, 2000. No Controlled Substance Excise Tax was imposed on the possession of marijuana on February 3, 2000. Tax was only imposed on separate possessions prior to February 3, 2000. Therefore, the Indiana Department of Revenue did not violate Taxpayer's rights pursuant to the Fifth and Fourteenth Amendments to the United States Constitution.

Taxpayer alternatively argues that even if there were no actual violation of Taxpayer's constitutional right against double jeopardy, he felt like he was placed in jeopardy twice for the same offence. Taxpayer's perception that he was placed in double jeopardy despite the reality does not provide an adequate basis for relief.

#### **Finding**

Taxpayer's protest is denied.